

CHAPTER FOURTEEN

NONCONFORMING SITUATIONS

Section 14-10 Continuation of Nonconforming Situations - Unless otherwise specifically provided in these Codes and subject to the restrictions and qualifications set forth in this Chapter, nonconforming situations that were otherwise lawful on the effective date of these Codes may be continued.

Section 14-20 Nonconforming Lots

- A. **Lot Can be Used in Conformity** - When a nonconforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than the required minimums set forth in Section 4-70, A - Minimum Lot Sizes and Section 4-75 - Residential Density, then the lot may be used as proposed just as if it were conforming.
- B. **Setback Requirements Nonconformity** - When the use proposed for a nonconforming lot is one that is conforming in all other respects but the applicable setback requirements (Section 13- Setbacks) cannot reasonably be complied with, then the entity authorized by these Codes to issue a permit for the proposed use (the designated official or the Planning and Zoning Commission) may allow deviations from the setback requirements if it finds that:
 - 1. The property cannot reasonably be developed for the proposed use without such deviations,
 - 2. These deviations are necessitated by the size or shape of the nonconforming lot, and
 - 3. The property can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety.
- C. **Interpretation** - For purposes of Subsection (B), compliance with setback requirements is not reasonably possible if a building that serves the minimal needs of the proposed use for the nonconforming lot cannot practicably be constructed and located on the lot in conformity with such setback requirements. However, mere financial hardship does not constitute grounds for the finding that compliance is not reasonably possible.

Section 14-30 Extension or Enlargement of Nonconforming Situations

- A. **Increase in the Extent of Nonconformity** - Except as provided in this section, no person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:
1. An increase in the total amount of space devoted to a nonconforming use, or
 2. Greater nonconformity with respect to dimensional restrictions such as setback requirements or density requirements or other requirements such as parking requirements.
- B. **Completed Buildings** - Subject to Subsection (D), a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by these Codes, was specifically designed or arranged to accommodate such use. However, a nonconforming use may not be extended to additional buildings or to land outside the original building.
- C. **Use of Open Land** - A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming, except that a use that involves the removal of natural materials from the lot (e.g., a sand pit) may be expanded to the boundaries of the lot where the use was established at the time it became nonconforming if 10 percent or more of the earth products had already been removed on the effective date of these Codes.
- D. **Changes in the Degree of Activity** - The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other paragraphs of this section occur.
- E. **Single-Family Residential Uses**- Any structure used and maintained for single-family residential purposes may be enlarged or replaced with a similar or a larger size structure, so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to such matters as setback and parking requirements. A permit may be required for any additions or enlargement. This paragraph is subject to the limitations stated in Section 13- Setbacks.

Section 14-40 Repair, Maintenance and Reconstruction

- A. **Minor Repairs** - Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged.

- B. Reconstruction**- If a structure located on a lot where a nonconforming situation exists is damaged to an extent that the costs of repair or replacement would exceed 50 percent of the appraised valuation of the damaged structure, then the damaged structure may be repaired or replaced only in accordance with a permit issued pursuant to these Codes. This subsection does not apply to structures used for single-family residential purposes, which structures may be reconstructed pursuant to a land use permit just as they may be enlarged or replaced as provided in Subsection 14-30, E - Single-Family Residential Uses.

Section 14-50 Change in Use of Property Where a Nonconforming Situation Exists

- A. Requiring a New Permit** - A change in use of property (where a nonconforming situation exists) that is sufficiently substantial to require a new permit in accordance with Section 4-10 – (Permits Required) may not be made except in accordance with these Sections. However, this requirement shall not apply if only an advertising structure permit is needed.
- B. Reverting to Nonconforming Status** - If all of the other requirements of these Codes applicable to the use can be complied with, permission to make the change must be obtained in the same manner as permission to make the initial use of a vacant lot. Once conformity with these Codes is achieved, the property may not revert to its nonconforming status.
- C. Criteria for Permit** - If all of the requirements of these Codes applicable to the use cannot reasonably be complied with, then the change is permissible if the entity authorized by these Codes to issue a permit for that particular use (the designated official or Planning and Zoning Commission) issues a permit authorizing the change. This permit may be issued if the permit-issuing authority finds, in addition to any other findings that may be required by these Codes, that:
1. The intended change will not result in a violation of Section 14-30 - Extension or Enlargement of Nonconforming Situations, and
 2. All of the applicable requirements of these Codes that can reasonably be complied with will be complied with. Compliance with a requirement of these Codes is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible.

Section 14-60 Abandonment and Discontinuance of Nonconforming Situations

- A. **Abandonment** - When a nonconforming situation is (i) discontinued for a consecutive period of twelve (12) months, or (ii) discontinued for any period of time without a present intention to reinstate the nonconforming use, the property involved may thereafter be used only for conforming purposes. A new use must meet all the requirements of these Codes unless the entity with authority to issue a permit for the intended use, issues a permit to allow the property to be used for this purpose without correcting the nonconforming situations. This permit may be issued if the permit-issuing authority finds that eliminating a particular nonconformity is not reasonably possible (i.e., cannot be accomplished without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation). The permit shall specify which nonconformities need not be corrected.
- B. **Operations Considered as a Whole** - For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this Chapter, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a nonconforming apartment building for twelve (12) months shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building as a whole is continuously maintained. But, if a nonconforming situation is maintained in conjunction with a conforming use, discontinuance of a nonconforming situation for the required period shall terminate the right to maintain it thereafter.
- C. **Effective Date** - When a structure or operation made nonconforming by these Codes is vacant or discontinued at the effective date of these Codes, the twelve (12) month period for purposes of this section begins to run on the effective date of these Codes